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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,754	02/22/2002	Gerald W. Fly	8540G-000058	9350

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EXAMINER
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CANTELMO, GREGG

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/080,754

Applicant(s)

FLY ET AL.

Examiner

Gregg Cantelmo

Art Unit

1745

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-4,6-18 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-25 is/are allowed.
- 6) ☐ Claim(s) 1-4,9,10,13-18 and 20 is/are rejected.
- 7) ☐ Claim(s) 6-8,11,12 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. In response to the amendment received April 13, 2005:
  - a. Claims 1-4, 6-18 and 20-25 are pending. With claims 6-8, 11, 12 and 21 objected to as allowable subject matter and claims 22-25 allowed for the reasons set forth in the previous office actions;
  - b. The specification objection is withdrawn in light of applicant's arguments;
  - c. The 112 first and second paragraph rejections are withdrawn in light of applicant's arguments;
  - d. The prior art rejections of record stand.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 13, 15 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Cipollini, of record.

The rejection is described in more detail in the previous office action, incorporated herein.

### ***Response to Arguments***

Art Unit: 1745

3. Applicant's arguments filed April 13, 2005 have been fully considered but they are not persuasive.

First it appears that Cipollini describes separator element as impermeable (col. 5, ll. 30-34). Therefore the separator of Cipollini is in fact held to be impermeable.

Second, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the extent and scope of materials which the separator is impermeable to) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Third Applicant states that since the separator plate is porous, it is therefore permeable. However this statement is not entirely persuasive. First, as argued by the previous examiner, water filling the pores would render the separator plate non-porous and impermeable with respect to the reactants. Further it is evident from the explicit disclosure of Cipollini that Applicant's assumption that a porous plate is permeable fails to recognize that this is not true for a material which has selective permeability. Thus the Examiner maintains the previous Examiner Chaney's rejection on the basis that the scope of the claims extend beyond Applicant's arguments and agrees with the previous Examiner that a filling of the pore of the separator with water will generate a water filled separator which is nonporous (due to the water filling) and impermeable with respect to the reactant gases.

Art Unit: 1745

It is apparent that the claims do not specify what materials the claimed separator is impermeable to. Since the separator 14 of Cipollini is disclosed as being nonporous upon absorption of water and impermeable with respect to the reactant gases, it is held that this sufficiently anticipates the separator of the instant claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title; if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 4, 9, 10, 14, 16 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Cipollini for reason of record previously described in the office action mailed March 2, 2004, incorporated herein.

***Response to Arguments***

5. Applicant's does not make any further arguments apart from those directed to the 102 rejection above. Since the 102 rejection has been maintained and no further arguments are directed to the 103 rejection, the 103 rejection stands as well.

***Allowable Subject Matter***

6. Claims 22-25 are allowed as set forth in the previous office action.

7. Claims 6-8, 11-12 and 21 are indicated as having allowable subject matter as set forth in the previous office action.

***Conclusion***

Art Unit: 1745

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregg Cantelmo whose telephone number is (571) 272-1283. The examiner can normally be reached on Monday to Thursday from 9 a.m. to 6 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. FAXES received after 4 p.m. will not be processed until the following business day. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

Art Unit: 1745

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregg Cantelmo  
Primary Examiner  
Art Unit 1745

gc



July 7, 2005